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May 25, 2004

MB Docket No. 04-207

COMMENT REQUESTED ON A LA CARTE AND THEMED TIER PROGRAMMING AND PRICING OPTIONS FOR PROGRAMMING DISTRIBUTION ON CABLE TELEVISION AND DIRECT BROADCAST SATELLITE SYSTEMS

Comment Date: July 8, 2004

Reply Comment Date: July 23, 2004

Through this public notice, comment is sought on factual questions regarding the provision of a *la carte* and "themed-tier" services on cable television and direct broadcast satellite systems. The responses to the questions listed below will be used in the preparation of a Report that will address questions relating to the ability of multichannel video programming distributors ("MVPDs") to provide such services to customers on a voluntary basis.

This request for comment is intended to assist in gathering information necessary to respond to specific requests from members of Congress for a Report on these issues. See May 18, 2004, letter from Congressmen Barton, Dingell, Upton, Markey, and Deal of the Committee on Energy and Commerce to Chairman Powell and May 19, 2004, letter from Senator John McCain, Chairman, Committee on Commerce, Science and Transportation to Chairman Powell. [Copies included in the file of this Docket.]

The Report will address, at a minimum, the following topics:

I. HISTORICAL

Do MVPDs currently have the option to purchase channels from programmers on a stand-alone basis, such that they could, if they chose, offer programming to consumers on an *a la carte* or themed-tier basis? What are the limitations, if any, on their flexibility to do so? What statutory or regulatory action would be needed to remove any such limitations?

II. RATES

What would the impact be on retail rates to consumers if programmers were required to offer their programming to MVPDs exclusively on a stand-alone basis, and could not also offer programming on a bundled basis for free or at a discounted rate?

What would the impact be on retail rates to consumers if programmers, in addition to the currently offered packages, were required to allow MVPDs to offer their programming on an *a la carte* or themed-tier basis if the MVPD chose to do so?

Can MVPDs currently offer *a la carte* and themed-tier service in addition to the packages currently offered, such as basic and expanded basic? Can the same universe of channels be offered both on an expanded basic basis, as well as an *a la carte* or themed-tier basis? How would an *a la carte* or theme-tiered approach affect a network's ability to attract advertising revenue? Would the impact change depending upon whether an MVPD subscriber had to purchase a basic/expanded basic tier before purchasing additional channels on an *a la carte* basis? How would an *a la carte* or themed-tier option, in addition to packages currently offered, affect a network's ability to attract advertising revenue?

What effect would *a la carte* or themed-tier have on a network's per-subscriber license fees?

Are there networks that have migrated from being offered on a tiered basis to an *a la carte* basis, or vice versa? What was the effect of this migration on the network's economic viability and cost to consumers?

III. RETRANSMISSION CONSENT

How have broadcast networks and affiliate groups used the retransmission consent process to expand carriage of affiliated programming? How has this affected rates for MVPD offerings for consumers?

Do the rules governing retransmission consent and must-carry limit consumers' ability to select their own programming? If so, how?

IV. DIVERSITY OF PROGRAMMING

What effect, if any, would the voluntary offering of *a la carte* or themed-tier service have on the ability of independent, niche, religious, and ethnic programming to continue to be carried or launched?

V. RURAL AND SMALLER MARKETS

Describe the programming cost differential for the largest cable and satellite companies and the smallest independent MVPDs in smaller markets and rural areas. What is the "volume discount" to the larger companies?

What percent of total expenses do smaller MVPDs in smaller markets and rural areas attribute to programming, and how does this compare to the largest cable and satellite companies?

What would be the impact on the programming costs of smaller MVPDs if they were to purchase programming on a stand-alone basis rather than in bundles?

What would be the impact on the programming costs of smaller MVPDs if they were allowed to offer *a la carte* or themed-tier service in addition to bundled packages?

VI. SET-TOP BOXES

Is an addressable converter box required for every television set on which a consumer might wish to view programming offered on an *a la carte* or themed-tier basis? What is the number of television sets that are not currently connected to addressable converter boxes? What are the costs to consumers of buying or leasing these boxes?

Is an addressable converter box required for every television set on which a consumer might wish to view digital programming? Is it true that *a la carte* or themed-tier services can only be offered on a digital basis? What percent of cable and satellite distributors offer digital programming to their subscribers? What percent of consumers currently subscribe to digital programming packages?

What impact would an *a la carte* and themed-tier service have on the uni-directional plug-and-play regulations, and on the ongoing discussions regarding potential bi-directional plug-and-play regulations?

VII. LEGAL AND REGULATORY QUESTIONS

Is there any reason to treat cable and satellite operators differently with regard to the *a la carte* and themed-tier service?

Would MVPDs be in compliance with the must carry rules so long as they offered all local broadcast stations on an *a la carte* or themed-tier basis, or would the must-carry rules prohibit MVPDs from offering local broadcast stations on an *a la carte* or themed-tier basis?

What, if any, Constitutional or other legal questions are raised by programmers' ability to bundle services through retransmission consent, regional sports contracts, and national programming contracts for marquee programming?

What, if any, Constitutional or other legal questions would be raised if Congress required programmers to offer their channels to MVPDs on a stand-alone basis and prohibited them from requiring carriage of their programming on particular tiers?

What, if any, Constitutional or other legal questions would be raised if, in addition to currently offered packages, Congress required programmers to allow MVPDs to voluntarily offer their channels on an *a la carte* or themed-tier basis?

We seek comment on these issues and any other issues that will inform the Report on the provision of *a la carte* or themed-tier programming by MVPDs.

VIII. PROCEDURAL MATTERS

Comments should be filed on or before July 8, 2004 and reply comments should be filed by July 23, 2004. Comments and reply comments may be filed using the Commission's Electronic Filing System ("ECFS") or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). All comments should reference MB Docket No. 04-207.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition parties should serve a copy of each filing via e-mail or one paper copy to Ben Golant, Suite 4A-803, Media Bureau, FCC, 445 12th St., S.W., Washington, D.C. 20554.

Comments, reply comments, and other submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, S.W., Room, CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at qualexint@aol.com. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov

or call the Consumer and Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

For further information contact Ben Golant, Media Bureau at (202) 418-7111.

By the Chief, Media Bureau

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